

**R E M A R K S****I. Status of the Application**

Claims 1-3, 5-8, 10-20, 21-36, 38-41, 43-49, 51-63, and 66-73 are pending. Claims 1, 10, 19, 25, 26, 34, 43, 49, 51, 53, 55, 56, and 70 are amended. Claims 4, 9, 20, 37, 42, and 50 are cancelled without prejudice.

The Examiner and his Supervisor are thanked for discussing the Office Action, claims, and prior art with the undersigned attorney by telephone on April 5, 2010 (“the April 5 Interview”). The Supervisor stated that amendments to the independent claims along the lines of those made herein would be entered after Final Rejection. The amendments, in part, add to the independent claims subject matter from dependent claims which have previously been discussed, as indicated below, and are believed to put the application in condition for allowance. In addition, the term “in accordance with,” as used in claim 10, for example, was discussed. While the term in the claims is believed to be clear, particularly when read in light of the specification, to advance prosecution, the term has been replaced by “by” or “via” in the claims, as requested by the Supervisor. Since the new terms are synonymous with “in accordance with,” the claims are not narrowed by this amendment.

**II. Claim Rejections - 35 USC § 103****A. Ellis, Plourde and Aspromonte**

Claims 1, 4-16, 18-29, 31-34, 37-60, and 66-73 have been rejected under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent Publication No. 2007/0199030 (“Ellis”), U.S. Patent No. 7,380,029 (“Plourde”), and WO00/54506 (“Aspromonte”).

**1. Independent Claims 1 and 34**

Independent claim 1 defines an apparatus for receiving program content comprising, in part, a first software application “to realize at least a first programming service for providing first

programming content in accordance with a broadcast schedule” and a second software application “to realize at least a second programming service for providing second programming content after broadcast thereof.” The second programming content is “recorded during the broadcast thereof at a location remote from the apparatus.” The second application has “a first, activated state and a second, background state running as a background process.” Claim 1 further requires that, when in the second, activated state, the second application is “receptive to a request for obtaining a selected portion of the second programming content.”

Claim 1 has been amended to require that the first application has a third, activated state and a fourth, off state, and “the second application causes a state of the first application to change from the third, activated state to the fourth, off state,” as recited in claim 9. Independent claim 34 is a method claim corresponding to claim 1, and has been similarly amended to incorporate the subject matter of claim 37.

The Examiner admitted that neither Ellis nor Plourde disclose the first, activated state and the second background state of the second application, but alleged that Aspromonte does. Aspromonte describes a resource allocation system for allocating control of multimedia resources between at least two computer programs on a multimedia client. (Abstract). Foreground applications control active video and audio resources. Other executing applications are referred to as background applications. (Page 8, lines 2-8, emphasis is added). A TV manager, shown generally at 60 in Fig. 3, “interfaces between operating system 41, application 52, and the set top box multimedia resources 62.” (Page 7, lines 24-27). The TV manager allocates “the set top box multimedia resources based on a priority scheme. The priority scheme is defined such that it is not necessary for a particular application 52 to be aware of the other applications 52.” (Page 7, lines 14-18, emphasis added).

The TV manager continues normal operations until a change in conditions is detected. (Page 12, lines 16-20). When a change in conditions is detected, the TV manager determines which of the current resource requests has priority. (Page 13, lines 10-12). When a computer program that is not currently in control of the tuner has made the dominant request, then the foreground application that is controlling the tuner is sent a deactivation request for each active and secondary resource it controls requesting the application to shut down the associated multimedia resources. The multimedia resources are deactivated once the application has shut down the data streams associated with those multimedia resources 62. This provides the applications that have open data streams an opportunity to shut down those streams gracefully.” (Page 14, lines 16-24, emphasis added). It appears that it is the TV manager that requests the shutdown.

Amended claim 1 requires, in part, that “the second application causes a state of the first application to change from the third, activated state to the fourth, off state.” The Examiner alleged that in Aspromonte, “the foreground application deactivates when a request for a background application is issued,” apparently based on the paragraph quoted above. However, Aspromonte only states that a request is sent to shut down the “multimedia resources” associated with a foreground application. There is no teaching or suggestion in Aspromonte or the other cited references, to cause a state of the claimed first application to change from an activated state to an off state by the claimed second application.

Claims 1 and 34, and the claims dependent upon them are, therefore, patentable over Ellis and Plourde.

The dependent claims also require limitations not shown in Ellis and Plourde. For example, neither Ellis nor Plourde show self-activation of the second application, as recited in claims 8 and 41.

Withdrawal of the rejections and reconsideration of the claims are respectfully requested.

## **2. Independent Claims 19 and 49**

Independent claim 19 defines an apparatus for receiving program content, comprising, in part, memory for providing first and second software applications, as described above with respect to claim 1. A device receives information concerning a change from a first program source to a second program source. Claim 19 has been amended to require “in response to the change, the second program source is accessed by the first application,” as recited in claim 20. Claim 19 also requires that in response to the change, “the second application becomes receptive to a request for obtaining a selected portion of the second programming content; and in response to the request, the state of the second application is changed to the second, activated state to obtain the selected portion of the second programming content.” In addition, claim 19 has been amended to recite that a server presents “the stored programming content via the first application, as requested by the Supervisor in the April 5 Interview. While the original claim language is believed to be clear, to advance prosecution, a synonymous term is used. The scope of the claim is not limited by this amendment. Claim 49, which is a system claim corresponding to claim 19, is similarly amended.

The Examiner alleged in the rejection of claims 20 and 50 that “both the recorded and broadcast programs are accessed through the program guide” in Ellis. As discussed in the April 5 Interview, the program guide is neither the first nor the second application, as claimed. Ellis does not, therefore, teach or suggest this limitation.

Aspromonte does not show accessing second program content by the claimed first application in response to the change from a first program source to a second program source, either. Nor does Aspromonte show a second application becoming receptive to a request for second programming content in response to such a change, and becoming active in response to such a request, as claimed.

Claims 19 and 49, and the claims dependent upon them, would not, therefore, have been obvious in light of Ellis, Plourde, and Aspromonte. The dependent claims include allowable subject matters, as well.

For example, neither Ellis nor Plourde show the following additional limitations required by claims dependent on independent claims 19 and 49: manipulating a presentation of the stored programming content via the first application in response to a signal indicating a desired manipulation of a presentation of material from the second program source, as recited in claims 21 and 51; manipulating the second program content via the second application, after the request is received, as recited in claims 23 and 53; or manipulating a presentation of the buffered content via the first application in response to a signal indicating a desired manipulation of a presentation of the selected portion of the second programming content, as recited in claims 26 and 56.

Withdrawal of the rejection and reconsideration of the claims are respectfully requested.

## B. Other Rejections

Claims 2, 3, 35, and 36 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Ellis, Plourde, Aspromonte, and U.S. Patent Publication No. 2004/0226044 (“Goode”). Claims 17 and 30 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Ellis, Plourde, Aspromonte, and U.S. Patent Publication No. 2002/0178447 (“Plotnick”). Claims 61-63 have been rejected under 35 U.S.C. 103(a) as being allegedly

unpatentable over Ellis, Plourde, Aspromonte, and U.S. Patent Publication No. 2004/0226042 (“Ellis ‘042).

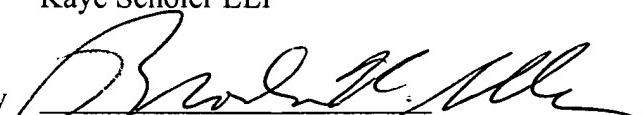
These claims are allowable for being dependent on allowable claims, as discussed above. The claims include patentable features, as well.

Withdrawal of the rejection and reconsideration of the claims are respectfully requested.

### **III. Conclusion**

Withdrawal of the rejections and reconsideration of the claims are respectfully requested.

Respectfully submitted,  
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